IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 21085 of 2004(I)

PETITIONERS:

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1. THE PRESIDENT,
   KERALA STATE TRANSPORT WORKERS CO-OPERATIVE
   SOCIETY LTD.NO.T-133, S.S.KOVIL ROAD, THAMPANOOR,
   THIRUVANANTHAPURAM.

2. THE SECRETARY,
   KERALA STATE TRANSPORT WORKERS CO-OPERATIVE
   SOCIETY LTD. NO.T-133, S.S.KOVIL ROAD, THAMPANOOR,
   THIRUVANANTHAPURAM.

BY ADV. SRI.N.UNNIKRISHNAN

RESPONDENTS:

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1. PALAYYAN, S/O. DEVADASAN,
   GRACE VILLA, CHAIKKOTTUKONAM, NEYYATTINKARA.

2. THE MANAGING DIRECTOR,
   KERALA STATE ROAD TRANSPORT CORPORATION,
   TRANSPORT BHAVAN, EAST FORT, CHIEF OFFICE,
   THIRUVANANTHAPURAM.

3. THE DISTRICT TRANSPORT OFFICER,
   KERALA STATE ROAD TRANSPORT CORPORATION,
   CHIEF OFFICE, NEYYATTINKARA.

4. THE KERALA LOK AYUKTA,
   THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.

R1 BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL
R2 & R3 BY SHRI K. PRABHAKARAN, SC, KSRTC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 4.7.2007, THE COURT ON 15.11.2007 DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C).NO. 21085 OF 2004 I

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF STATEMENT OF RECOVERY POSITION OF THE FIRST RESPONDENT AGAINST COMPLAINT NO.133/2004 BEFORE THE HONOURABLE KERALA LOK AYUKTA, THIRUVANANTHAPURAM.

EXT.P2 TRUE COPY OF CERTIFICATE OF SALARY LIABILITY AND MEMBERSHIP IN CO-OPERATIVE SOCIETY IN RESPECT OF THE FIRST RESPONDENT ISSUED BY THE THIRD RESPONDENT.

EXT.P3 TRUE COPY OF SURETY BOND NO.00784 DATED 27.11.1998 EXECUTED BY S/SHRI C. YESUDASAN AND S. BALARAJ.

EXT.P4 TRUE COPY OF LOAN APPLICATION NO.574 DATED 7.10.1998 ISSUED BY THE FIRST PETITIONER TO THE FIRST RESPONDENT.

EXT.P5 TRUE COPY OF COMPLAINT NO.133/2004 FILED BY THE FIRST RESPONDENT BEFORE THE FOURTH RESPONDENT.

EXT.P6 TRUE COPY OF STATEMENT DATED 2.6.2004 SUBMITTED BY FIRST RESPONDENT.

EXT.P7 TRUE COPY OF COUNTER AFFIDAVIT IN COMPLAINT NO.133/2004 DATED 18.3.2004 FILED BY PETITIONERS.

EXT.P8 TRUE COPY OF JUDGMENT DATED 5.4.2002 IN OP NO.37952 OF 2001 PASSED BY THE HONOURABLE HIGH COURT OF KERALA.

EXT.P9 TRUE COPY OF ORDER DATED 3.6.2004 IN COMPLIANT NO.133 OF 2004 PASSED BY THE FOURTH RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

// TRUE COPY//

PS TO JUDGE.

K. M. JOSEPH, J.

W.P.C. NO. 21085 OF 2004 I

Dated this the 15th November, 2007

JUDGMENT

Case of the petitioners, in brief, is as follows:

First petitioner is the President of a Co-operative Society and the second petitioner is the Secretary of the Society. First respondent is a Member of the Society who had taken a loan of Rs.40,000/= at 19 per cent interest with monthly instalment of Rs.1,140/= covering a period of fifty months from the petitioner Society. It is the case of the petitioners that the first respondent defaulted payment and action was taken to recover the principal and interest thereon which comes to Rs.10,431/=. The due date of the last instalment was January, 2003, but it was received after eleven months. Therefore, the simple interest plus the principal amount required to be paid in addition to the amount of Rs.57,000/= recovered by the KSRTC comes to Rs.10,431/=. An amount of Rs.9,220/= is towards principal and Rs.1,211/= is towards interest. It is stated that no penal interest has been

raised against the first respondent as damages or losses. The first respondent preferred a complaint against the petitioners and also the KSRTC. According to him, he had availed a loan of Rs.10,000/= and it was closed. On 29.11.1998, he had availed another loan of Rs.40,000/= and it was closed. The first respondent retired from the service of the Corporation in February, 2003. In the complaint filed before the Lok Ayukta the prayer is to direct respondents 1 to 4 therein (Petitioners and Respondents 2 & 3 herein) to take steps to close the complainant's Accounts in Member No.9220 and give back the share of Rs.4,000/= and thrift of Rs.650/= with interest. There was also a prayer for awarding costs. The complaint of first respondent apparently was that he had repaid the loan and there was undue delay and mal-administration. Petitioners filed Ext.P7 Counter Affidavit and the KSRTC filed Ext.P6 Statement. The challenge is against Ext.P9 Order by which the Lok Ayukta referred to Ext.P8 Judgment of this Court to hold that the claim, if any, by the petitioners for damages as a result

of the delay on the part of the KSRTC for payment is left open to be decided before the Arbitrator or Civil Court. It was found that it was admitted that the entire amount under the Loan Account was recovered from the first respondent's salary by the KSRTC. The Lok Ayukta further ordered that in the circumstances, no steps will be taken against the first respondent for recovery of any amount towards the loan taken by him from respondents 3 and 4 before the Lok Ayukta, as the entire amount has been paid through KSRTC. Regarding payment of the share of Rs.4,000/= and thrift amount of Rs.650/=, it was ordered that the first respondent can make a representation to the fourth respondent Secretary therein, who will take a decision in accordance with law without delay. It was further ordered that the return of the shares and the amount need not wait till the decision on the claim for damages by the fourth respondent Secretary and that is an independent proceeding.

2. In the Counter Affidavit filed on behalf of the respondent KSRTC, it is stated that the Society recoveries

effected from the salary of employees from 8/2000 to 12/2001 had to be kept pending due to paucity of funds. It is stated that the dues towards the Societies including the petitioners have been cleared as ordered by this Court and there is no dues to the Society. There is reference to the common Judgment of this Court to the effect that the petitioners are free to work out their remedies in other Forums. It is stated that the delay was neither due to willful negligence on the part of the Corporation, nor the result of any mismanagement.

3. In the Reply Affidavit, it is stated that the recovery took 61 months. There was accumulation of further interest for eleven months in the case of the first respondent and the lapse, it is stated, on the part of the KSRTC affected about 3000 employees involving Rs.4.95 Crores for the period from 8/2000 to 12/2001 which was repaid by the KSRTC in twenty instalments. It is stated that no penal interest is charged from the first respondent. It is stated that the second respondent is liable to pay the loss, compensation and damages to the

petitioners as well as to t4he first respondent for his omission and violation of statutory provisions.

4. In the Counter Affidavit filed by first respondent, it is, inter alia, stated that Section 37 of the Kerala Co-operative Societies Act is a matter of concern between the creditor Society and the employer. In the reply to the same, it is stated that the amount due is towards principal loan plus interest accrued on it till its payment. It is stated that till the principal amount and simple interest is remitted to the petitioners, first respondent's liability does not cease and the loan account cannot be closed. It is stated that it is necessary to get at least the principal amount with simple interest in time.

5. I heard the learned counsel appearing on behalf of the parties. Counsel for petitioners took me through the complaint filed by first respondent. He also referred to Clauses (c) and (d) of the IInd Schedule to the Lok Ayukta Act to contend that the complaint was without jurisdiction. Clauses (c) and (d) are extracted below:

> *"(c) Administrative action taken in matters, which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligation.*
>
> *(d) Action taken in respect of appointment, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants but, not including actions relating to claims for pension, gratuity, provident fund or to any claims which arises on retirement, removal or termination of service."*

6. According to the petitioners, the amounts due from the first respondent were not received by the Society and, therefore, the direction not to proceed against the first respondent in the impugned order is unsustainable. The account of the first respondent could not be closed, as the amounts due to the petitioners were not realised and hence the direction that the consideration of the representation of the first respondent for

return of the share price with thrift money need not await the proceedings of the petitioners for recovery of the damages is also liable to be set aside, it is contended. He would point out that the direction of this Court in Ext.P8 Judgment which is referred to in Ext.P9 Order of the Lok Ayukta was rendered in a different context. In that case, it is pointed out that the person who filed the Writ Petition and the scope of the Writ Petition was not borne in mind by the Lok Ayukta, it is contended.

7. Per contra, learned counsel for the first respondent would point out that the complaint was perfectly maintainable. He would submit that the recoveries were effected by the KSRTC in time and he further referred to Rule 52(7) of the Co-operative Societies Rules, which reads as follows:

> *"**52. Deduction from salary or wages:** (7) Any amount realised by a society from a member by deduction shall be given credit by the society to the account of such member with effect from the date on which the amount was deducted by the employer or the Officer disbursing the salary or wages irrespective of the date on which the*

> *amount was actually received by such society. On the appropriation of the amount in the account of the society, the particulars of credit for the amount realised shall forthwith be furnished to the member by the society."*

Therefore, according to him, whenever amount was realised, the date on which credit should be given for the payment by the loanee, is the date on which the payments are actually received by the employer, in this case, the KSRTC. The actual date on which the creditor receives the amount, is not crucial, it is pointed out. If that be the position, in so far as the respondent is concerned, it must be treated that he had paid the entire amounts due in which case he was entitled to the return of the money. He would point out that the first respondent retired in 2003 and because of the case, even though he is entitled to the retirement benefits, going by seniority, he has been deprived of the payments.

8. The complaint of the first respondent proceeds on the basis that the first respondent had paid off the loan and yet, there

is delay and mal-administration and the prayer is to close the account and to disburse to him the share and the thrift money. Clause (c) to the IInd Schedule excludes from the jurisdiction of the Lok Ayukta, cases of contracts having commercial aspects. Of course, even in such a case, relief can be granted for delay in performance. Clause (c), of course, excludes matters relating to pay and other benefits of service, but the Lok Ayukta has been given jurisdiction in respect of matters relating to pension, etc. In Kamalu v. State of Kerala (2000 (3) KLT 227), this Court has held that "what is permitted to be investigated is naturally the actions relating to claims of pension, gratuity, PF or to any claims which arise on retirement/removal or termination of service which is not the case before us.". Counsel for petitioners also contends that the Act only provides for advisory action under Section 12(1). It is pointed out, therefore, that the direction that no steps will be taken against the first respondent, which takes away the right of the petitioners to move against the first respondent, is unsustainable.

8. I find that neither is there any reference to Rule 52(7) of the Co-operative Societies Rules, nor is there any reference to the contention based on Section 8 read with Clauses (b) and (c) to the IInd Schedule. Apparently, neither the contention based on Clauses (b) and (c) of the IInd Schedule, nor the contention based on Rule 52(7) were raised before the Lok Ayukta. Of course, it is stated in the Statement of the petitioners that the complaint is not maintainable. I feel that the matter requires to be considered afresh as it is a matter relating to jurisdiction. Accordingly, Ext.P9 is quashed and the matter is remitted back to the Lok Ayukta which will consider the matter afresh and take a decision after hearing the parties in accordance with law. In view of the fact that the matter is pending for some time, a decision will be taken within a period of two months from the date of production of a copy of this Judgment. The stand of the petitioners before the Lok Ayukta was that they are entitled to Rs.10,240/=. In view of the fact that the first respondent has retired long back, I make it clear that if he is otherwise entitled

to release of the pensionary benefits in law, it is open to the respondent Corporation to release the benefits, after detaining an amount which may be sufficient, to satisfy the claim of the petitioners, as also the claim of any creditor or for the liquidation of any liability to the Corporation in accordance with law.

The Writ Petition is disposed of as above.

K. M. JOSEPH, JUDGE

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